APPENDIX A

Supplemental Statement of the Case

Commencement of Boycott

The background of the present case lies in the Hawaiian dock strike of 1949, which was called by International and its affiliated local in Hawaii against the stevedoring companies and commenced May 1, 1949 (R. 1017). Pineapple was not a party to or involved in this strike (R. 1015-1018).

As a result of the strike, and the tie-up of all transportation from Hawaii, Pineapple was unable to export its products through its usual method of using ocean freighters (R. 1018). Faced with orders for 68,300 cases of pineapple from processors of fresh fruit in California (R. 912-913; Exhibit 188) and requiring pineapple at its own plant at San Jose, California, Pineapple chartered in August, 1949, an ocean-going barge YFN from the United States Navy and loaded it, with employees of Isleways, Ltd., (a wholly owned subsidiary of Pineapple) at the latter's terminal in Honolulu with a cargo of approximately 115,000 cases of pineapple worth more than $680,000.00 (R. 915, 918-919, 1014-1015, 1018, 1091).

No attempt was made to interfere with the loading of the barge in Hawaii. Prior to its departure for the mainland there were no disturbances or labor difficulties of any kind connected with it[1]. As noted, Pineapple

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[1]However, three days prior to the departure of the barge the International representative in Hawaii cabled International's Regional Director in Seattle concerning the barge and asking whether the International Longshoremen's Association in Tacoma would handle the barge (Exhibit 1).

and Isleways were not engaged in any dispute with their own employees and were not parties to the labor dispute and strike between the stevedoring companies and International and its affiliated local union (R. 1015-1018).

Although the barge was towed across the Pacific Ocean towards the San Francisco Bay area, it proved to be impossible to make arrangements there to unload the barge because of the certainty that the ILWU would boycott it (R. 1020). The barge was accordingly diverted to Puget Sound and the Port of Tacoma where longshoring work was done by the International Longshoremen's Association (R. 1020-1021). When Pineapple contacted this latter union in Tacoma to arrange for the unloading of the barge, they refused to handle it as a result of International's activities (R. 1022-1024)[2].

Being unable to unload in Tacoma, Pineapple was again forced to seek a port where the ILWU did not operate and finally made arrangements with the Port of The Dalles at The Dalles, Oregon, on the Columbia River approximately 90 miles east of Portland, whereby the latter agreed to discharge and unload the pineapple from the barge and to load it upon railroad cars and trucks for shipment to California (R. 474-483, 496-500, 1024). Railroad cars were ordered from the Union Pacific Railroad, as well as trucks from various truck common carriers (R. 1014, 1034-1035). Pineapple also entered

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[2]It was developed at the trial that International's Regional Director had contacted the various maritime unions concerning the barge and particularly the ILA, claiming the barge was loaded under strike conditions in Hawaii and hence was considered "hot cargo" and would be picketed if an attempt was made to unload her (Tr. 705-710).

into an agreement with the Goodat Crane Service for the lease of a crane and an operator to lift the pineapple from the barge to the port dock (R. 883, 1040). The barge arrived at the Port of The Dalles on Saturday evening, September 24, 1949, with unloading scheduled to commence on September 26 (R. 1024-1025, 1041).

Boycott at The Dalles

On September 23, a day before the arrival of the barge, Meehan (admittedly the paid employee of and representative of International in Oregon, R. 51) went to The Dalles to meet with Commissioners of the Port of The Dalles for the purpose of forcing the Port to give up its agreement to unload the barge (R. 477-480, 500, 502)[3]. Labeling the barge "hot cargo" loaded by "unfair labor", Meehan charged that Pineapple was trying to break the strike in the Hawaiian Islands and that he would picket the Port if any attempt was made to unload the barge.

On September 25 the crane leased by Pineapple was brought to The Dalles (R. 876, 883). As it was being assembled a number of the longshoremen who had been standing in the entrance to the Port dock came over to tell Goodat's employees that they had better not take the crane out on the dock if they intended to unload some "hot pineapple" because "it is liable to melt the boom off, and it won't be healthy for you" (R. 879).

[3]No sooner had the barge left the Puget Sound area than International's Regional Director in Seattle had contacted Meehan, and instructed him to talk to International about future action (R. 732-735, 1359-1360).

When the owner of the crane himself was threatened in his home by men identifying themselves as from the "Hawaiian Pineapple job" at The Dalles, he terminated the lease arrangement and Pineapple was forced to buy the crane (R. 885-886, 1041).

On September 26 after the arrival of the barge at the Port dock, Meehan and the President of Local met with the Commissioners of the Port of The Dalles, threatening them again not to unload, Meehan stating he had 20 pickets there and could easily get 200 more (R. 480-485, 502-505).

As threatened, various individual longshoremen from Local began to picket on September 26 at the entrance to the Port dock. Similarly, on September 26 a Hawaiian longshoreman from International's local union in Hawaii began to picket at the Port dock (R. 52-54, 417, 506, 1254, 1315)[4]. Meanwhile, Meehan contacted various officials of other labor unions (the Railroad Brotherhoods, the Teamsters, and the Inland Boatmen) about observing the picket line set up at the Port dock (R. 780-784, 889). By September 27 the picket line had grown to 75 to 100 longshoremen (R. 584).

The Riot

On September 28, the President of Local admittedly dispatched at least 150 to 200 individual longshoremen members of Local from the union hall in Portland to picket before the entrance to the Port dock (R. 888-890,

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[4]The Hawaiian picket, according to the Secretary-Treasurer of Local 8, "wasn't representing Local 8 which had no Hawaiians in its membership" (R. 1317).

1275-1276). Local paid for the gasoline used by these individual longshoremen in driving to The Dalles and back and also paid for their meals while they were in The Dalles (Exhibit 184; R. 892-894, 1256-1257).

By noon there was a mass picket line of over 200 longshoremen before the entrance to the Port dock (R. 433-434, 506, 585; Exhibits 47-66, inc.)[5]. Every vehicle that went in and out of the Port dock was checked and every driver asked if he had any dealings whatsoever with Pineapple. If not, the driver was given a slip saying he had no connection with Pineapple and permitted to go on to the dock (R. 438-439, 548).

The pickets also passed out circulars to the citizens of The Dalles signed by "International Longshoremens and Warehousemens Union" containing a message to to the people of The Dalles that the "Big Five" of Hawaii were trying to break the Hawaiian strike by unloading their "scab pineapple" in the Port of The Dalles (Exhibits 23, 25; R. 371-372). Meehan confirmed that he had "something" to do with the preparation of the circulars (R. 808)[6].

On hearing that Pineapple had two large trucks waiting outside The Dalles to come in to the dock, four

[5]The record does not make exactly clear who was in charge of the massed pickets: Meehan advised the Assistant Chief of Police at The Dalles that he was in charge of the picketing (R. 594-595), whereas the Secretary-Treasurer of Local stated that the officials of Local 8 were in charge at The Dalles (R. 1311-1312).

[6]In a press interview a few hours before the riot on the dock, Meehan told the Editor of The Dalles Optimist "that the ILWU was born in violence and had to have violence to continue to exist" (R. 521).

of the longshoremen went from the dock to persuade Pineapple's drivers to refuse to drive the trucks on to the dock. However, after receiving a clearance from their own A. F. of L., Teamsters local union, the drivers decided to proceed to the dock (R. 677-680, 695, 1098-1099, 1119, 1121-1122, 1125-1126, 1136, 1140-1141, 1143).

When these trucks drove on to the Port dock, the massed longshoremen turned into a "riotous mob" and stormed through police on duty and rushed to the Port dock where they assaulted Pineapple's employees and damaged and destroyed its property. Witnesses testified that the damage effected by rioting longshoremen was done by "team work" and that they marched off the dock in an orderly way after the riot, where the Mayor of The Dalles and another disinterested witness heard Meehan address the assembled longshoremen and tell them that "they had done a fine job" (R. 369-370, 461, 571, 574, 580, 660).

Post-Riot Activities

On the day following the riot the President of Local again dispatched members of his union to The Dalles, and Local again paid for their gasoline and meals (Exhibit 184; R. 890, 1256-1257). Some 200 to 300 members of Local patrolled the streets of the City of The Dalles, terrifying the people of the community (R. 443, 445, 457, 416-463, 1042). Again circulars were distributed over the signature of "The International Longshoremen's & Warehousemen's Union—CIO" blaming the

violence of the day before at the Port dock on the Big Five companies of Hawaii and expressing regret "for the incident of yesterday, even though we feel it was not our fault. We are accustomed to having our picket lines respected" (Exhibit 24).

The riot put a stop to the unloading of the barge. It was not until October 19 that Pineapple was able to effect repairs to its crane and trucks and make arrangements to load cargo from the Port dock on to railroad cars and trucks (R. 486, 1038, 1040, 1043).

On October 20, however, longshoremen with "ILWU" banners again picketed at the entrance of the Port dock, bringing an end to the unloading operation and forestalling the movement of any cargo from the dock (R. 488, 512, 890, 1044). This picket line was finally removed by an injunction against International and Local (R. 489-490, 512-513, 1043-1046). By the end of October, Pineapple was finally able to commence moving its cargo by truck and by rail to its San Jose, California, plant (R. 1046). The barge was finally completely unloaded on November 8 (R. 1047).

When 22 individual members of Local were arrested and indicted in the Circuit Court of the State of Oregon for the County of Wasco for the crime of riot, Local put up the bail money to release the indicted men and retained counsel to defend them. So too, when these individuals were convicted by pleading guilty, Local paid their fines and also reimbursed them for the wages which each of the convicted men lost as a result of the criminal proceedings (Exhibit 184; R. 895, 1259-1260,

1319-1320). Harry Bridges, the President of International, testified that the ILWU also furnished money to Local in connection with the defense of the indicted longshoremen (R. 873-874). Local also received financial contributions for the expenses it incurred in picketing at The Dalles from other ILWU unions through International (R. 896-898, 1258-1259, 1316-1317)[7].

Petitioners' Statement of the Case

Petitioners' six-paragraph statement of the case (pp. 6-9) seems designed to convey the impression that the actions taken by International and Local were justified as part of a revolt of the downtrodden serfs of Hawaii against the "Big Five" corporations which are said to rule the Islands, and as an effort to preserve the economic well-being of thousands of longshoremen in Portland, Oregon; and that in any event the riot, which destroyed Pineapple's property and injured its employees, was only a "completely spontaneous" and sudden flare-up and should not be allowed to confuse the picture.

Petitioners' statement is not in accord with the facts and does not find support in the record in this case. The references to the claimed nature of the Hawaiian strike and Pineapple's relation to it are not based upon testimony relating thereto given at the trial but are

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[7]The Secretary-Treasurer of Local 8 teletyped International's San Francisco office on November 8, 1949 that:

"WE ARE IN THE BITE PLENTY BECAUSE OF THE PINEAPPLE BARGE. WE WANT NO MORE OF IT HERE OR ANY WHERE ELSE. WUD LIKE TO HEAR AN INDICATION AT LEAST OF SOME SUPPORT FROM ILWU IN REGARD TO OUR PREDICAMENT HERE. WE ARE SICK OVER THE WHOLE DAMNED DEAL . . ." (Exhibit 185).

based upon charges which Meehan made prior to the riot in talking to a newspaperman (R. 537).

As to Pineapple's reason for chartering the barge, it had orders for 68,300 cases of pineapple from processors of fresh fruit in California and required pineapple at its own plant in San Jose and was prevented by the Hawaiian strike from using an ocean freighter (Exhibit 188; R. 912-913, 1018). Petitioners mis-state the evidence when they say Pineapple's orders from its customers contained strike clauses. There is no such evidence. Such clauses were contained in agreements of Pineapple's San Jose plant for the purchase of fresh fruit from California growers and such clauses had nothing to do with the pineapple on the barge or with the orders Pineapple had therefor.

As to why the barge went to the Port of The Dalles (p. 7), the evidence shows that after unloading was impossible due to the ILWU in the San Francisco Bay area and in Tacoma, Pineapple sought out a port where the ILWU did not operate (R. 1020-1024). The Port of The Dalles was an open port without contracts with anyone, where river vessels and barges regularly loaded and discharged and where railroad cars were available; and the Port had employees that did cargo work (R. 474-475, 478).

As to the unloading of the barge by the Port being an "obvious threat to the economic well-being" of thousands of skilled longshoremen (pp. 7-8), petitioners here depart from the evidence and resort to the same

specious claim (devised some time after the riot) which was rejected by the jury and the courts below.

Finally, petitioners' "spontaneous combustion" theory advanced in explanation of the riot (p. 8) simply ignores all the evidence. Petitioners' theory was well disposed of by the District Court, when it stated:

> ". . . I am never going to instruct that when you gather 300 men in one spot under these circumstances you can then claim it was a result of a flash of temper. . . ." (R. 1452).

Table of Authorities Cited

	Pages
Claycraft Company v. United Mine Workers, 204 Fed. 2d 600, 6 Cir.	8
Douds v. Metropolitan Federation etc., 75 Fed. Supp. 672, S.D.N.Y.	4
Douglas v. International Brotherhood etc., 136 Fed. Supp. 68, W.D. Wash.	8
Garmeade Coal Co. v. International Union etc., 230 Fed. 2d 945, 6 Cir.	7
Gunning v. Cooley, 281 U.S. 90	5
ILWU v. Juneau Spruce Corp., 342 U.S. 237	3, 6
International Brotherhood of Teamsters, 84 NLRB 360	3
International Brotherhood etc. v. W. L. Mead, Inc., 230 Fed. 2d 576, 1st Cir.	7, 8
Lerman v. Fruit Processors, 191 Fed. 2d 349, D.C. Cir.	7
Lincoln Mills v. Textile Workers Union, 230 Fed. 2d 81, 5 Cir.	8
Local Union No. 25 v. New York etc. R. R. Co., 350 U.S. 155	3
NLRB v. Business Machines etc., 228 Fed. 2d 553, 2 Cir.	4
NLRB v. Deena Artware, 198 Fed. 2d 645, 6 Cir., cert. den. 345 U.S. 906	4
NLRB v. International Rice Milling Co., 341 U.S. 655	2, 3
New Orleans etc. R. R. Co. v. Jopes, 142 U.S. 18	6
Press Company v. NLRB, 118 Fed. 2d 937, D.C. Cir.	4
U.E. v. Oliver Corp., 205 Fed. 2d 376, 8 Cir.	6
United Brick and Clay Workers v. Deena Artware, 198 Fed. 2d 637, 6 Cir., cert. den. 334 U.S. 897	3, 4
United Brotherhood of Carpenters v. United States, 330 U.S. 394	5
United Mine Workers v. Patton, 211 Fed. 2d 742, 5 Cir.	8
Wilson Bros. v. Textile Workers Union, 132 Fed. Supp. 163, S.D.N.Y.	8

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1955

No. 838

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 8,
Petitioners,

vs.

HAWAIIAN PINEAPPLE COMPANY, LTD., a corporation,
Respondent.

REPLY MEMORANDUM FOR PETITIONERS.

Respondent appears to think that since the courts below rejected the contentions advanced by petitioners, this Court should do likewise (Op. pp. 5-10, 11, 14, 17, 21). But it is precisely because those contentions were rejected below, resulting in conflicts with views previously expressed, either here or in other circuits, that review is now sought. Clearly the opinion of a court

whose judgment is sought to be examined by writ of certiorari is hardly authority in opposition to the petition for the writ.

Briefly considering the points made, we wish to make the following observations:

I.

A. The argument (Op. pp. 6-8) that there was no evidence to support the theory that petitioners had a legitimate primary interest in the situation at The Dalles ignores the evidence referred to at pages 11-12 of the petition. We are not calling upon this Court to evaluate the evidence; we merely urge that in the face of such evidence it was not "proper" as the court below thought to submit the case to the jury on the theory that there was "no legal excuse" (226 Fed. 2d at 879; R. 1502; App. p. 78) for petitioners' conduct.

B. Nor does respondent's attempted distinction of *NLRB v. International Rice Milling Co.*, 341 U.S. 655 (Op. p. 11) hold water. That case held that the secondary boycott provisions of the Act did not apply in the absence of an inducement to the employees of the "neutral" employer to engage in "concerted" activities (341 U.S. at 670-1). Here, even on respondent's own statement of the facts (Op. App. A, pp. 3-4) it must be conceded that whatever inducement was shown to have been directed toward such employees, it did not have as its object "concerted" activity on their part. The few sporadic and isolated instances

of talking to the truck drivers and others were no more an inducement to "concerted" action than was the picketing in the *Rice Milling* case.[1]

C. Finally, the decision in *Local Union No. 25 v. New York etc. R. R. Co.*, 350 U.S. 155, does not necessarily resolve the conflict between the decision of the court below and that of the Board[2] as to whether, and for what purposes, a railroad is an employer within the meaning of the Act. All that this Court there said was that a railroad was not "precluded" from seeking the Board's aid in the prevention of unfair labor practices, and that the Board was not divested of jurisdiction under Section 8(b)(4) merely because a railroad was the "complaining party". However, this Court did not hold, and has never held, that an employer, subject to the provisions of the Railway Labor Act, may be either the "employer" or the "other person" referred to in Section 303 of the Act.

Furthermore, even though Sections 8(b)(4) and 303 have similar purposes, they represent independent statutory schemes for dealing with the problem (*ILWU v. Juneau Spruce Corp.*, 342 U.S. 237, 243-4), and determinations under one section are not conclusive in litigation involving the other. *United Brick and Clay Workers v. Deena Artware*, 198 Fed. 2d 637,

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[1]Certainly here, as in *Rice Milling*, the question of violence is immaterial so far as concerns the legal principles involved. That issue should be (341 U.S. 672), and here was, directed to the attention of local law enforcement officers.

[2]The citation given in the Petition (p. 14) to the Board's decision in the *Teamster* case was in error (an error which respondent did not catch [Op. p. 11]). The correct citation is: *International Brotherhood of Teamsters*, 84 NLRB 360.

642-3, 6 Cir., cert. den. 334 U.S. 897; *NLRB v. Deena Artware,* 198 Fed. 2d 645, 653, 6 Cir., cert. den. 345 U.S. 906. The extent to which, if at all, a railroad may be embraced within the provisions of Section 303 is still undecided.

D. The applicability of the "ally doctrine" cannot be determined, as respondent suggests (Op. p. 10) by a decision that a nonemployer may not be required to comply with a Board order directing reinstatement and back pay, even though it owns some stock in the employer corporation (*Press Company v. NLRB,* 118 Fed. 2d 937 [D.C. Cir.]). Here, there is no question of fastening liability on respondent for the unlawful conduct of other employers, which was the issue in the *Press Company* case. There is here presented the quite different issue of whether the economic ties between respondent and the other Hawaiian employers were sufficiently close to preclude the application of Section 303 under the rulings in *Douds v. Metropolitan Federation etc.,* 75 Fed. Supp. 672, S.D.N.Y., and *NLRB v. Business Machines etc.,* 228 Fed. 2d 553 [2d Cir.]. That issue has not yet been resolved here. For the reasons set forth in the Petition (pp. 12-13), it should be.

II.

Respondent concedes (Op. p. 15) that petitioners had an "unquestioned right to have a jury trial" on the agency question, but ignores the fact that the peremptory instruction of the trial court (Op. p. 12) deprived them of that right. It is no answer to petitioners' contention to say that there was submitted

to the jury the question of whether the named individuals were acting within the scope of their employment (Op. p. 13), for this assumes the primary question: Were the named individuals agents of petitioners, and if so, of which?

In order to hold either petitioner liable, it was necessary for respondent to establish its liability vicariously. For this it is necessary that two factors coexist: (1) That the actor be an agent of the principal, and (2) that he act within the scope of his agency. What respondent fails to recognize is that a correct instruction relating to the second factor does not cure the refusal of the courts below to permit the jury, under proper instructions, to determine whether the first factor existed.

The suggestion (Op. pp. 13, 15) that the peremptory instruction was justified because the evidence was "undisputed" simply ignores the evidence cited in the Petition (pp. 17-18, n. 14). Nor does the Petition call upon this Court to evaluate the conflict between testimony relied upon by petitioners and that referred to by respondent (Op. p. 14, n. 7). All that is required is that, in the face of the conflict, the courts below be directed to follow this Court's rulings in *Gunning v. Cooley*, 281 U.S. 90, and *United Brotherhood of Carpenters. v. United States*, 330 U.S. 394,[3] and thereby permit the jury to decide whether the named

[3]And also the decisions to the same effect from the other circuits cited at pages 18-19 of the Petition.

individuals were in fact agents of either petitioner, and if so, of which.[4]

III.

Respondent, as did the court below, indulges in a variety of hypotheses to justify imposing liability upon the alleged principals despite the complete exoneration of their "agents". (Op. pp. 17-19.) But none of these "theories"[5] were submitted to the trial jury and may not now be used to sustain a palpably improper verdict.

Respondent's failure to consider the "general principles" of *respondeat superior* liability laid down by this Court in *New Orleans etc. R. R. Co. v. Jopes*, 142 U.S. 18, and by other Federal and State courts (Petition, pp. 22-23) indicates its inability to come to grips with the issues *as they were presented to the jury*, and not as they were subsequently rationalized on appeal.

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[4]Neither *ILWU v. Juneau Spruce Corp.*, 342 U.S. 237, nor *U.E. v. Oliver Corp.*, 205 Fed. 2d 376 (8 Cir.) (Op. p. 16) is in point. In the former case no claim was made, either in the Court of Appeals or here, that the charge quoted by respondent (Op. p. 16, n. 9) was in error. In the latter case the fact of the agency (as distinguished from its scope) was not an issue. See 205 Fed. 2d at 381, 386 and Appellant's brief therein, No. 14661, 8 Cir. Thus the question here presented was not present in either of those two cases.

[5]E.g. "Members who participated but were not named as defendants", or "assistance to the Hawaiian picket", or "ratification of the acts of its members who . . . plead guilty to riot", or "International could act and be bound through agency of local". Compare the different theories advanced by the court below (211 Fed. 2d 881; R. 505; App. 83).

IV.

On the minimization point, the very case cited by respondent (Op. p. 20) supports petitioners, for there the court made its own independent examination of the record and applied to it the principles enunciated in the cases heretofore cited by us for the purpose of determining whether the "general rule . . . that 'the seller himself minimize or keep down his damages' " (*Lerman v. Fruit Processors,* 191 Fed. 2d 349-356 [D.C. Cir.]) had been complied with. Here the court below *expressly refused to do this* (226 Fed. 2d 880; R. p. 1504; App. p. 81) and thereby not only committed error, but rendered a decision in conflict with holdings in this Court and in other circuits in the cases cited at pages 25-28 of the Petition.

CONCLUSION.

As the court below recognized, this case presents a number of new questions respecting the application of Sections 301 and 303 of the Act. Those questions have not been, but should be, passed upon by this Court. The increasing number of damage suits being brought by employers against unions under those sections of the Act[6] require that these questions be set at rest at this time.

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[6]A hasty examination of the recently reported decisions uncovers the following cases involving these sections of the Act: *Garmeade Coal Co. v. International Union etc.,* 230 Fed. 2d 945, 6 Cir.; *International Brotherhood etc. v. W. L. Mead, Inc.,* 230

For the foregoing reasons, the Petition for the writ of certiorari should be granted, and the judgment below reversed.

Dated, San Francisco, California,
May 28, 1956.

Respectfully submitted,
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Of Counsel.

Fed.

Fed. 2d 576, 1st Cir.; *Lincoln Mills v. Textile Workers Union*, 230 Fed. 2d 81, 5 Cir.; *United Mine Workers v. Patton*, 211 Fed. 2d 742, 5 Cir.; *Claycraft Company v. United Mine Workers*, 204 Fed. 2d 600, 6 Cir.; *Douglas v. International Brotherhood etc.*, 136 Fed. Supp. 68, W.D. Wash; *Wilson Bros. v. Textile Workers Union*, 132 Fed. Supp. 163, S.D.N.Y.